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IN THE CIRCUIT COURT FOR THE THIRD CIRCUIT
STATE OF HAWAII

| | | |
|-------------------------------------|---|--------------------|
| BANK OF NEW YORK MELLON, FKA, |) | Civil No. 15-1-368 |
| THE BANK OF NEW YORK, TRUSTEE, |) | |
| FOR THE BENEFIT OF THE |) | |
| CERTIFICATE HOLDERS, SWABS, INC. |) | |
| INC. ASSET BACKED SERIES, 2007-5 |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| DANIEL JOSEPH O'PHELAN, ELLEN |) | |
| JULIA O'PHELAN, DEPARTMENT OF |) | |
| TAXACTION—STATE OF HAWAII, |) | |
| JEFF MEEK; MARYLOU ASKREN; |) | |
| UNITED STATES OF AMERICA, |) | |
| DEPARTMENT OF THE TREASURY, |) | |
| INTERENAL REVENUE SERVICE; |) | |
| JOHN DOES 1-20; JANE DOES 1-20; DOE |) | |
| CORPORATIONS 1-20; DOE ENTITIES |) | |
| 1-30; AND DOE GOVERNMENTAL |) | |
| UNITS 1-20. |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

Comes now, Defendant Dan O'Phelan and hereby files this Notice of Removal pursuant to 28 U.S.C. § 1446 which defines the procedure for removal as follows:

(a) A defendant or defendants desiring to remove any civil action

or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

In addition, removal of this action is authorized pursuant to 28 USC Sec Diversity of Citizenship; Amount in Controversy; Costs which states as follows:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between —

(1) citizens of different States;

In this case, Defendant a resident of the State of Alaska and Plaintiff is a resident of the State of Delaware and its registered agent is located at 1209 Orange Street, Wilmington, New Castle County, Delaware 19801

Title 28 U.S.C. § 1441(a) provides that unless otherwise expressly provided by Act of Congress, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction," may be removed by the defendant to the district court of the United States.⁵ Section 1446 provides the procedure for removal. See generally, *THERMTRON PRODUCTS, INC., and Larry Dean Newhard, v.H. David HERMANSDORFER*, 423 U.S. 336,

96 S.Ct. 584, 46 L.Ed.2d 542(1976) and see also *Carden v. Arkoma Associates*, 494 U.S. 185, 187, 110 S.Ct. 1015, (1990).

Defendant Dan O'Phelan is a citizen of the State of Alaska.

Wherefore Dan O'Phelan moves for and notices the opposing party and the Court of said removal of the case from the State of Hawaii, Third Circuit Court and transferred to the United States District Court of Alaska. Plaintiff requests a jury trial as indicated on the *Civil Cover Sheet*.

By signing below, Dan O'Phelans assert that the statements made herein are true and correct to the best of his knowledge and that he is in compliance with Federal Rule of Civil Procedure 11.

DATED at Homer, Alaska on this 10th day of January, 2016

/s/ Dan O'Phelan
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